

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

MICHAEL S.,

Claimant

OAH CASE No. L-2005090101

vs.

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on January 25, 2006.

Deborah K. Crudup, Consumer Services Representative, Inland Regional Center, represented the service agency, Inland Regional Center.

Sharon Santibanez, mother of the claimant Michael S., represented the claimant. Ace D. Atkinson, Executive Director, Developmental Disabilities, Area Board XII was also present at the hearing to assist in the claimant's representation.

The matter was submitted on January 25, 2006.

ISSUE PRESENTED

Should the service agency be required to reimburse the claimant for the evaluation of the claimant completed by Intercare Therapy Inc.?

FACTUAL FINDINGS

1. Claimant, Michael S. ("the claimant") is a nine year old boy who is a client of the Inland Regional Center ("the service agency"). The claimant's date of birth is March 6, 1996. He lives at home with his parents. The claimant has been diagnosed with autism. He is eligible for regional center services under the Lanterman Act due to his diagnosis of autism.

2. Claimant has been a client of the service agency since 2003. It is undisputed that the claimant requires the service of social skills training. A social skills program is one that provides services to work on behavior, communication and socialization skills to children with autism and other developmental disabilities and their families. It has been a long process for the family to obtain that service for Michael.

Initially, the best social skills program identified for Michael was the social skills program offered at the University Center for Developmental Disabilities (“the UCDD program”). Unfortunately, UCDD had a waiting list for their program. Michael was placed on the waiting list for the UCDD program in August 2004. At that time, the family was told that it could take approximately one year for Michael to reach the top of the waiting list. While waiting for the program to have space for Michael, the service agency recommended the family to attend a mentoring group also offered at UCDD. The family attended this program, but continued to wait for Michael to be given the social skills training he needed. From 2004 to 2005, Michael’s need for social skills training increased. Nevertheless, he still waited for these social skills services. The service agency has no control over the fact that a vendor may very well have a waiting list.

3. While the family waited, the service agency did offer the family the mentor program at UCDD and also in sent the claimant’s mother to a conference on autism. After claimant’s mother attended the conference she learned of another social skills program for autistic children offered by Intercare Therapies Inc. (“Intercare”). In July 2005, claimant’s mother informed the service agency that she learned of this program Intercare and she wanted to pursue it for Michael since the UCDD was still not available. Michael’s mother was becoming more and more concerned about Michael’s need for social skills because Michael was going to transition from a special education program at one school to a mainstream program at a new school beginning in September 2005. Michael’s consumer’s services coordinator (“CSC”) was not familiar with the Intercare program, but she referred the request to her supervisor. The service agency subsequently determined that the Intercare program was not an age-appropriate program for Michael. The service agency therefore denied the mother’s request for the Intercare program.

4. As a possible alternative, Michael’s CSC learned of a social skills program offered at the Center for Autism Research, Evaluation and Service (“Cares”) out of San Diego. The service agency made a referral to Cares for the claimant. On July 14, 2005, Michael’s CSC notified his mother in writing that the service agency had approved a ten hour assessment for Michael with Cares. Subsequently, Cares arranged the assessment that took place from August 1 through August 8, 2005. The service agency did not make a referral to Intercare for the claimant to be assessed by them. That would have been duplicative since they had already arranged for Michael to be assessed by Cares, a more appropriate program.

However, the claimant's mother was still understandably concerned about making sure Michael received the services as soon as possible and before the new school year began. She had been told by someone at Intercare that they had staff available to begin a social skills program with Michael immediately. She also understood there could be a delay in obtaining services from Cares. The service agency did not know exactly when Cares would have staff available to begin Michael's program. As a result of the long delay and the family's frustration, on August 8, 2005, the claimant's mother decided to arrange an assessment with Intercare on her own. Michael was assessed by Intercare on August 19, 2005, at a cost of \$640.00. The claimant's family paid for the Intercare assessment themselves. The Intercare assessment was not authorized by the service agency. In fact, the claimant's CSC did not even know about the Intercare assessment until claimant filed an appeal seeking reimbursement. Although it is understandable that the claimant's family would want to proceed with an assessment they believed would more quickly lead to services, they did so at their own expense since it was not previously authorized by the regional center.

5. On August 1 through August 8, 2005, Michael was assessed at Cares. On August 18, 2005, Cares recommended the appropriate level of social skills services for Michael. Those services began in September 2005 and the family is very pleased with the program.

6. The claimant is requesting reimbursement of the \$640.00 fee the family paid for the Intercare assessment. The service agency denied the request since the family contracted with Intercare on their own and without any authorization of the service agency. Although the service agency certainly could have pursued alternative services for Michael sooner, this did not authorize the claimant to obtain whatever services his family wanted when those alternative services have not previously been approved for payment. The family may certainly obtain whatever services they believe are appropriate, but the family then does so at their own expense. There was no showing that the service agency abused its discretion in denying the claimant's request for reimbursement of services that the service agency had previously denied.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b) provides:

“As used in this part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, or towards the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The

determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option...."

Welfare and Institutions Code section 4648 provides in pertinent part:

"In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan....

(a)(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents ... determines will best accomplish all or any part of that consumer's program plan."

2. California Code of Regulations Title 17, section 50612 provides in pertinent part:

"(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

(c) The authorization for the purchase of service shall be in the following form:

(1) The authorization shall be in writing, except as follows:

(A) A verbal authorization by the regional center director or his authorized agency representative shall be allowed to provide emergency services utilizing the following procedures:

(1) An immediate notation is made in the case record showing the date and nature of such authorization; and center's next cyclical production of purchase of service authorization documents. . . . “

The evidence presented herein failed to establish that the regional center should be required to reimburse the claimant's family for the assessment performed by Intercare. The claimant arranged for the assessment without first obtaining authorization for payment with the regional center, as set forth in Findings 1-6.

3. The regional center must monitor the effectiveness of all services it funds as well as the cost-effectiveness of the use of public resources. (Welfare and Institutions Code sections 4501 and 4646, subdivision (a)). The claimant presented insufficient evidence to establish the need for or effectiveness of a second assessment of claimant. The regional center did not abuse its discretion in denying the claimant's request for reimbursement for this item. Any services funded by a service agency should be a fiscally effective use of public funds. The regional center is therefore not required to reimburse the claimant for the Intercare assessment, as set forth in Findings 1-6.

ORDER

The claimant's appeal to require the service agency to reimburse the family for the cost of the Intercare Therapies Inc. assessment of the claimant is hereby denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: February 7, 2006

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings